

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

COMMENCED TERM, MARCH 1887

No. 100

SANTA FE PACIFIC RAILROAD COMPANY, APPELLANT,

vs.

JOHN BASTON PAYNE, SECRETARY OF THE INTERIOR.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF
COLUMBIA.

FILED JULY 15, 1887.

(27,200)

(27,809)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 452.

SANTA FE PACIFIC RAILROAD COMPANY, APPELLANT.

vs.

JOHN BARTON PAYNE, SECRETARY OF THE INTERIOR.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF
COLUMBIA.

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Court of Appeals of the District of Columbia.

No. 3341.

SANTA FE PACIFIC RAILROAD Co., &c., Appellant,

vs.

FRANKLIN K. LANE, Secretary of the Interior.

Supreme Court of the District of Columbia.

In Equity. No. 35427.

SANTA FE PACIFIC RAILROAD Co., a Corporation, Plaintiff,

vs.

FRANKLIN K. LANE, Secretary of the Interior, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

Bill.

Filed September 12, 1917.

In the Supreme Court of the District of Columbia.

In Equity. No. 35427.

SANTA FE PACIFIC RAILROAD Co., a Corporation, Plaintiff,

vs.

FRANKLIN K. LANE, Secretary of the Interior, Defendant.

To the Supreme Court of the District of Columbia, Holding an Equity Court:

Your orator complains and says:

The Santa Fe Pacific Railroad Company is a corporation incorporated under and in accordance with an act of Congress approved

March 3, 1897, and brings this bill of complaint against Franklin K. Lane, a citizen of the State of California, residing in the District of Columbia, Defendant.

1. By the Act of Congress of July 27, 1866 (14 Stats., 292), a grant of lands was made through the then Territory of New Mexico, in aid of the construction of the Atlantic & Pacific Railroad. The line of the Atlantic & Pacific Railroad opposite the tracts hereinafter described was duly constructed and accepted by the President of the United States as required by the said Act of July 27, 1866, and the grant of the lands hereinafter described was duly earned.

2. The Atlantic & Pacific Railroad Company defaulted on its bonds, and the mortgage given was foreclosed and sale effected of its properties. The purchasers under the foreclosure sale organized the Santa Fe Pacific Railroad Company, the same being in accordance with the Act of Congress of March 3, 1897, (29 Stats., 622).

2 3. By the first section of the Act of April 28, 1904, (33 Stats., 556), it was provided:

"That the Atlantic & Pacific Railroad Company, its successors in interest and its or their assigns, may, when requested by the Secretary of the Interior so to do, relinquish or deed, as may be proper, to the United States any section or sections of its or their lands in the Territory of New Mexico, the title to which was derived by said railroad company through the act of Congress of July twenty-seventh, eighteen hundred and sixty-six, in aid of the construction of said railroad, any portion of which section is and has been occupied by any settler or settlers as a home or homestead by themselves or their predecessors in interest for a period of not less than twenty-five years next before the passage of this act, and shall then be entitled to select in lieu thereof, and to have patented other sections of vacant public land of equal quality in said Territory as may be agreed upon with the Secretary of the Interior."

4. The E. $\frac{1}{2}$ of Section 31, T. 4 N., R. 17 W., New Mexico, is within the primary or place limits of the grant made by the Act of July 27, 1866, supra, to the Atlantic & Pacific Railroad. Said tract duly passed under said grant, but was, upon the request of the Secretary of the Interior, relinquished under the provisions of the Act of April 28, 1904, supra, in favor of certain small holding claimants, and the relinquishment was duly accepted by the Secretary of the Interior.

5. May 1, 1911, following the relinquishment of the above described lands on the request of the Secretary of the Interior, the Santa Fe Pacific Railroad Company duly filed in the local land office its selection under the Act of April 28, 1904, covering the E. $\frac{1}{2}$ Sec. 20, T. 15 N., R. 18 W., New Mexico.

6. Prior to the filing of the said selection on May 1, 1911, both the selected tract and the relinquished tract in lieu of which the se-

lection was made, had been duly classified by the Geological Survey, a bureau of the Interior Department entrusted with such matters, the classification showing that both the selected and lieu tracts were coal lands, the values of the products in each being fixed at the minimum price of \$20.00 per acre.

7: After the relinquishment and selection, a question was raised as to the prospective values of the coal deposits under the protest filed by an individual applicant for the lands, notwithstanding the pending selection, the applicant protesting against the equal values of the coal deposits as placed upon the land by the Government officials. This protest was first dismissed and later a hearing was ordered, and as a result of this hearing, the previous classification, under which the selection was made, was disregarded and the coal deposits within the surrendered lands were adjudged to be of the value of about \$54.00 per acre, and the coal deposits within the selected land at about \$90.00 per acre, and because of such adjudged difference in value in the coal deposits found in the lands, the selection, made many years before, was ordered canceled.

8. That the Atlantic & Pacific Railroad Company duly earned the title to the base lands hereinbefore described, which title passed to your orator under the foreclosure sale and the provisions of the act of March 3, 1887, supra; that this title was duly surrendered or relinquished by your orator upon the request of the Secretary of the Interior under the provisions of the Act of April 28, 1904, supra; that under said act, selection was duly made of the lands hereinbefore described, said selection being in full accord with the law and the lawful regulations of the Interior Department, and the same was duly allowed, all fees and commissions being paid on account thereof, and the company has since obligated itself respecting said land; that the subsequent action of the defendant in disregard to the rights of your orator is arbitrary and unwarranted, and his threatened cancellation of the selection previously allowed is without just cause.

9. And your orator further alleges that it has exhausted every remedy available under the practice before the Interior Department, and that the threatened action of the defendant herein above set forth, unless restrained, will deprive your orator of a valuable part of the land grant heretofore made by Congress, and will further result in the unlawful application and disposition of said lands by the defendant to other purposes and uses than under the grant aforesaid, and seriously interfere with the obligations heretofore undertaken by your orator respecting said land, to its irreparable loss, damage and injury, for which your orator has no adequate remedy at law, and is otherwise remediless, except in equity.

Wherefore, your orator prays:

That your Honor grant to your orator your writ of injunction, enjoining the defendant, Franklin K. Lane, Secretary of the In-

terior, as aforesaid, and his successors in office and all persons claiming to act under his authority or control, absolutely to desist and refrain from canceling the lawful selection of your orator in partial satisfaction of its grant fully earned, until your Honor shall appoint and direct and order herein; and that upon such hearing the
5 writ herein prayed be granted and continued until the final determination of this suit; and upon such final hearing be made permanent, and that your Honors do command the said defendant, Franklin K. Lane, Secretary of the Interior, as aforesaid, and his successors in office and all persons claiming to act under his authority or control to recall the order for the cancellation of the selection heretofore duly and lawfully presented by your orator, and to refrain from further action respecting the land selected except to issue patent therefor to your orator, to the end that the rights of your orator in the premises may be respected and legally recognized as by the grant provided.

To the end that the defendant may, if he can, show why your orator should not have the relief hereby prayed, and may make full, true and perfect answer, according to the best of his knowledge, remembrance, information and belief, to the several matters hereinbefore averred and set forth, as fully and particularly as if the same were herein repeated paragraph for paragraph, and he was thereto specifically interrogated (but not under oath, an answer under oath being hereby expressly waived), may it please your Honor to grant unto your orator a writ of subpoena ad respondem, issuing out of and under the seal of this honorable court, directed to the said defendant, Franklin K. Lane, commanding him to be and appear and make answer unto this bill of complaint, and perform and abide by such order and decree herein as to this Court may seem to be required by the principles of equity and good conscience.

And that your orator may have such other or further relief
6 in the premises as the nature of the circumstances of the case may require.

SANTA FE PACIFIC RAILROAD
COMPANY,

By ALEX. BRITTON,
EVANS BROWNE,
F. W. CLEMENTS,

Attorneys for Plaintiff.

CITY OF WASHINGTON,
District of Columbia, ss:

Personally appeared before me on this 7th day of September, 1917, Francis W. Clements, who being duly sworn, says that he is the attorney for the Santa Fe Pacific Railroad Company, and that the matter and facts set forth in this bill are true to the best of his knowledge and belief.

FRANCIS W. CLEMENTS.

Subscribed and sworn to this 7 day of September, 1917.

[SEAL.]

CHESTER R. SMITH,

Notary Public.

Motion to Dismiss.

Filed October 23, 1917.

* * * * *

Comes now the defendant, Franklin K. Lane, Secretary of the Interior, by his attorneys, and moves to dismiss the plaintiff's bill of complaint; and for cause shows:

That plaintiff has not in and by his bill set forth any cause of complaint entitling it to the relief sought or to any relief in equity; that as appears on the face of the bill, plaintiff tendered its selection of lieu land under the act of April 28, 1904, as it was bound to do, to the land department; that thereupon hearing was had to determine the quantity of the base land surrendered and the quality of the selected lieu land; that thereafter and in due and regular course of procedure in such cases obtaining the record made on said hearing came before the defendant for determination of a question of fact, i. e., as to whether the relinquished base land was of equal quality with the selected lieu land; that the defendant, thereupon, in the discharge of the duty imposed upon him by said act of April 28, 1904, on consideration of the record so made as aforesaid, found and determined that the lieu land and the base land were not of equal quality and therefore not subject to exchange under the terms of said act; and that exercising the discretion reposed in him under said statute, the defendant was unable to agree upon the exchange and held the plaintiff's selection for cancellation; that under the terms of said act, the defendant is constituted the sole and exclusive tribunal to determine whether or not lands offered in exchange are of equal quality with lands selected in lieu of the relinquished base land; that the determination thereof involves the exercise of judgment and discretion and that the exercise of said judgment and discretion is not controllable or reviewable by any court in any direct proceedings;

Wherefore, he prays that the bill of complaint may be dismissed with his reasonable costs, and that he may be permitted to go hence without day.

FRANKLIN K. LANE,

Secretary of the Interior,

By His Attorneys:

CHARLES D. MAHAFFIE,

Solicitor.

C. EDWARD WRIGHT,

Assistant Attorney.

Decree Dismissing Bill.

Filed November 4, 1919.

* * * * *

This cause came on to be heard on defendant's motion to dismiss the plaintiff's bill and was argued by counsel; and thereupon, the court having been fully advised in the premises, it is, this 4th day of November, 1919,

Ordered, adjudged, and decreed that the bill of complaint be and the same is hereby dismissed, with costs to the defendant to be taxed by the Clerk.

By the Court:

WILLIAM HITZ,
Justice.

Whereupon the plaintiff, on the date above mentioned, in open court noted an appeal from the foregoing decree to the Court of Appeals, and the same is hereby allowed; and the penalty of a bond for costs is hereby fixed in the sum of One Hundred Dollars (\$100) with leave to deposit with the Clerk, in lieu thereof, the sum of Fifty Dollars (\$50).

By the Court:

WILLIAM HITZ,
Justice.

No objection as to form.

BRITTON & GRAY,

*Attorneys for Plaintiff.**Memorandum.*

November 20, 1919. \$50 deposit in lieu of Appeal Bond.

Assignment of Errors.

Filed November 20, 1919.

* * * * *

Comes now the plaintiff, the Santa Fe Pacific Railroad Company, and makes assignment of the following grounds of error in support of its appeal in the above entitled cause from the decree entered on the 4th day of November, 1919, dismissing its bill filed in this cause, namely:

I.

That the Supreme Court of the District of Columbia erred in sustaining the motion to dismiss and in entering an order dismissing plaintiff's bill in this cause.

II.

That the Supreme Court of the District of Columbia erred in failing to grant to the plaintiff the prayers of its bill filed in this cause.

III.

That because the Supreme Court of the District of Columbia failed to give any reason in support of the order entered in this cause dismissing the plaintiff's bill the plaintiff alleges error:

(a) In failing to hold that the Act of April 28, 1904, (33 Stats., 556), under which selection in exchange was made, on which the plaintiff relies, should be construed as in pari materia with the Granting Act of July 27, 1866, (14 Stats., 292), granting lands in aid of the construction of the Atlantic & Pacific Railroad of which the plaintiff is the lawful successor, and by which latter act it was specifically provided: "that the word 'mineral' when it occurs in this act, shall not be held to include iron or coal."

(b) In failing to hold that the word "quality" as found in the Act of April 28, 1904, is not the equivalent of "value," and that as the surrendered and selected lands each contained coal deposits the value of the several deposits was immaterial.

(c) In failing to hold that as the only classification provided for coal lands at the time of the passage of the Act of April 28, 1904, was that made in the coal land law, fixing the price of \$20.00 per acre if within fifteen miles of a completed railroad, and ten miles where beyond that distance from a completed railroad (see Section 2347 U. S. R. S.), that even if the coal contents of the land was material that classification alone controls in fixing the quality of a selection when compared with the lieu tract as a basis for the selection under the Act of 1904.

(d) In failing to find that as the classification existing at the time the selection here involved was filed placed an equal value on the selected and surrendered lands, it necessarily made the same of equal quality for the purpose of selection even should the word "quality" be construed as the equivalent of "value" in considering coal contents.

(e) In failing to find that the status of the selection could not be affected by an attempted change in the classification of the lands occurring after the selection, and

11 (f) In failing to find that the discretion of the defendant with regard to action upon the plaintiff's selection was not arbitrary and could not be exercised to deprive the plaintiff of a right granted under a lawful selection because of a condition of his own creation occurring subsequently to selection.

ALEXANDER BRITTON,
F. W. CLEMENTS,
Att'ys Santa Fe Pacific R. R. Co.

Designation of Record.

Filed November 20, 1919.

* * * * *

The Clerk will please make up the record for appeal in the above entitled cause and include therein the following:

I.

Original Bill of Complaint.

II.

Motion of defendant to dismiss the bill of complaint.

III.

Final decree dismissing bill, together with notation of appeal in open court and fixing penalty of bond or amount of cash deposit on appeal.

IV.

Memorandum as to deposit of cash amount on appeal.

V.

Assignment of Errors by plaintiff.

VI.

Designation of record.

ALEX. BRITTON,
F. W. CLEMENTS,
Att'ys, Santa Fe Pacific R. R. Co.

12 Service of copy of the above designation of record on appeal acknowledged this 19th day of November, 1919.

C. EDWARD WRIGHT,
Attorneys for Defendant.

13 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 12, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made

part of this transcript, in cause 35427 in Equity, wherein Santa Fe Pacific Railroad Company, a corporation, is Plaintiff and Franklin K. Lane, Secretary of the Interior, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 2nd day of December, 1919.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG,
Clerk,

By W. E. WILLIAMS,
Assistant Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 3341. Santa Fe Pacific Railroad Co., &c., appellant, vs. Franklin K. Lane, Secretary of the Interior. Court of Appeals, District of Columbia. Filed Dec. 10, 1919. Henry W. Hodges, clerk.

In the Court of Appeals of the District of Columbia.

No. 3341.

SANTA FE PACIFIC RAILROAD COMPANY, a Corporation, Appellant,
vs.

FRANKLIN K. LANE, Secretary of the Interior.

Appeal from the Supreme Court of the District of Columbia.

*Motion to Substitute as Defendant John Barton Payne, Present
Secretary of the Interior, in the Place of Franklin K. Lane,
Former Secretary Thereof.*

Comes now the Santa Fe Pacific Railroad Company, and suggesting to the Court the resignation of Franklin K. Lane, as Secretary of the Interior, and the appointment of John Barton Payne as his successor, respectfully moves the Court that said John Barton Payne, in his capacity as Secretary of the Interior, be substituted as defendant in this case in the place and stead of said Franklin K. Lane.

As said Lane was made a party solely in his official capacity as Secretary of the Interior, and in order to prevent abatement of the proceeding on appeal as to the Secretary of the Interior, it is respectfully requested that the substitution moved be granted.

SANTA FE PACIFIC RAILROAD
COMPANY,
By ALEX. BRITTON,
F. W. CLEMENTS,
Attorneys.

March, 1920.

Endorsed: No. 3341. Santa Fe Pacific R. R. Co., a Corporation, Appellant, vs. Franklin K. Lane, Secretary of the Interior. Motion for substitution of defendant. Court of Appeals, District of Columbia. Filed Mar. 29, 1920. Henry W. Hodges, Clerk.

Saturday, April 3rd, A. D. 1920.

No. 3341.

SANTA FE PACIFIC RAILROAD Co., &c., Appellant,
vs.

FRANKLIN K. LANE, Secretary of the Interior.

On consideration of the suggestion of the retirement of Franklin K. Lane, and the appointment of John Barton Payne, as Secretary of the Interior in the above entitled cause, It is on motion now here ordered by the Court that the said John Barton Payne, Secretary of

the Interior be, and he is hereby made the party appellee in said cause in the place and stead of the said Franklin K. Lane, retired.

Thursday, May 6th, A. D. 1920.

No. 3340.

SANTA FE PACIFIC RAILROAD COMPANY, a Corporation, Appellant,
vs.

JOHN BARTON PAYNE, Secretary of the Interior,

and

No. 3341.

SANTA FE PACIFIC RAILROAD COMPANY, a Corporation, Appellant,
vs.

JOHN BARTON PAYNE, Secretary of the Interior.

The argument in the above entitled causes was commenced by Mr. F. W. Clements, attorney for the appellant, and was continued by Mr. C. E. Wright, attorney for the appellee, and was concluded by Mr. F. W. Clements, attorney for the appellant.

In the Court of Appeals of the District of Columbia.

No. 3341.

SANTA FE PACIFIC RAILROAD COMPANY, a Corporation, Appellant,
vs.

FRANKLIN K. LANE, Secretary of the Interior, Appellee.

Opinion.

Mr. Justice ROBB delivered the opinion of the Court:

The facts in this case do not differ materially from those in the preceding case, No. 3340, between the same parties. Our decision here, therefore, must be the same as in that case, and accordingly the decree appealed from is affirmed, with costs.

Affirmed.

Wednesday, June 2nd, A. D. 1920.

No. 3341. April Term, 1920.

SANTA FE PACIFIC RAILROAD COMPANY, a Corporation, Appellant,
vs.

JOHN BARTON PAYNE, Secretary of the Interior.

Appeal from the Supreme Court of the District of Columbia.
This cause came on to be heard on the transcript of the record from

the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered, adjudged, and decreed by this Court that the decree of the said Supreme Court in this cause be and the same is hereby affirmed with costs.

Per Mr. JUSTICE ROBB.

June 2, 1920.

In the Court of Appeals of the District of Columbia, January Term, 1920.

No. 3341.

SANTA FE PACIFIC RAILROAD COMPANY, a Corporation, Appellant,

vs.

JOHN BARTON PAYNE, Secretary of the Interior, Appellee.

Motion for Allowance of Appeal to the Supreme Court of the United States and to Stay Mandate.

Comes now the appellant, by its attorney-, and moves the Court to allow an appeal to the Supreme Court of the United States to review the decision of this Court herein, and to stay mandate; and for cause shows:

I.

That appeal lies under paragraph 5 of section 250 of the Judicial Code, in that the scope of the power of the Secretary of the Interior over the selection in question, as well as the duty of that officer with respect to such selection, is directly drawn in question in these proceedings.

II.

That appeal lies under paragraph 6 of Section 250 of the Judicial Code for that the construction of the Act of April 28, 1904 (33 Stats., 556), is drawn in question by the defendant who asserts and relies upon said Act as authority for denial of approval to the selection of the land involved, asserting that "under the terms of the Act only such lands as may be agreed upon with the Secretary as being equal in quality with the base lands may be selected."

ALEX. BRITTON,
F. W. CLEMENTS,

Attorneys for Appellant.

Endorsed: No. 3341. Santa Fe Pacific R. R. Co., a Corporation. Appellant, vs. John Barton Payne, Secretary of the Interior. Motion for allowance of appeal to the Supreme Court of the United States and to stay mandate. Court of Appeals, District of Columbia. Filed June 18, 1920. Henry W. Hodges, Clerk.

Wednesday, June 23rd, A. D. 1920.

No. 3341.

SANTA FE PACIFIC RAILROAD COMPANY, a Corporation, Appellant,
vs.

JOHN BARTON PAYNE, Secretary of the Interior.

On consideration of the motion for the allowance of an appeal to the Supreme Court of the United States in the above entitled cause, It is by the Court this day ordered that said appeal be and the same is hereby allowed and the bond to act as supersedeas is fixed at the sum of three hundred dollars.

(Bond on Appeal.)

Know all Men by these Presents, That we, Santa Fe Pacific Railroad Company, a corporation, as principal, and The Fidelity & Casualty Company of New York, as surety, are held and firmly bound unto John Barton Payne, Secretary of the Interior, in the full and just sum of Three hundred dollars *dollars*, to be paid to the said John Barton Payne, Secretary of the Interior, certain attorney, executors, administrators, successors or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this thirtieth day of June, in the year of our Lord one thousand nine hundred and twenty.

Whereas, lately at a Court of Appeals of the District of Columbia in a suit depending in said Court, between Santa Fe Pacific Railroad Company, a corporation, and John Barton Payne, Secretary of the Interior, a decree was rendered against the said Santa Fe Pacific Railroad Company, a corporation, and the said Santa Fe Pacific Railroad Company, a corporation, having prayed and obtained an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said John Barton Payne, Secretary of the Interior, citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof;

Now, the condition of the above obligation is such, That if the said Santa Fe Pacific Railroad Company, a corporation, shall prosecute said appeal to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

SANTA FE PACIFIC R. R. CO.,

By F. W. CLEMENTS. [SEAL.]

THE FIDELITY AND CASUALTY COMPANY OF NEW YORK,

By EDGAR K. LEGG, JR., Attorney. [SEAL.]

[Seal of the Fidelity and Casualty Company of New York.]

#783,368.

Sealed and delivered in presence of—

CHESTER R. SMITH.

HENRY C. DAVIS.

Approved by—

C. J. SMYTH,

*Chief Justice Court of Appeals of
the District of Columbia.*

[Endorsed:] No. 3341. Santa Fe Pacific R. R. Co., Appellant, v. John Barton Payne, Secretary of the Interior. Bond on appeal Supreme Court, U. S. Court of Appeals, District of Columbia. Filed Jun-30, 1920. Henry W. Hodges, Clerk.

UNITED STATES OF AMERICA, ss:

To John Barton Payne, Secretary of the Interior, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein Santa Fe Pacific Railroad Co., a corporation, is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the appellant should not be corrected and why speedy justice should not be done to the parties in the behalf.

Witness, the Honorable Constantine J. Smyth, Chief Justice of the Court of Appeals of the District of Columbia, this 30th day of June, in the year of our Lord one thousand nine hundred and twenty.

CONSTANTINE J. SMYTH,
*Chief Justice of the Court of Appeals of
the District of Columbia.*

Service acknowledged:

C. EDWARD WRIGHT,

Attorney for Appellee.

In the Court of Appeals of the District of Columbia, January Term
1920.

No. 3341.

SANTA FE PACIFIC RAILROAD COMPANY, a Corporation, Appellant.

VS.

JOHN BARTON PAYNE, Secretary of the Interior, Appellee.

On Appeal to the Supreme Court of the United States.

Assignment of Errors.

The appellant hereby assigns the following errors in the decision of the Court in the above entitled cause:

I.

That the Court erred in failing to find and hold that, as under the granting Act of July 27, 1866 (14 Stats., 292), it was specifically provided that the word "mineral" should not include coal or iron, the coal contents of the land was immaterial when determining the "quality" of lands selected by the Santa Fe Pacific Railroad Company, as successor to the Atlantic and Pacific Railroad Company, in exchange for lands surrendered under the Act of April 28, 1904 (29 Stats., 662), and as the decision of the Secretary of the Interior denying approval of such selection was based solely upon the supposed variance in value of the coal deposits in the selected and surrendered lands, the said decision was unwarranted under the law and was, therefore, arbitrary and unreasonable.

II.

That the Court erred in failing to find and hold that, even if the coal contents of the lands selected in exchange was an element to be considered in determining its "quality" under the Act of April 28, 1904, *supra*, that as the selected and surrendered lands were admittedly valuable for the coal contents, they were, therefore, both of the same "quality," namely, coal lands, and that the value of the coal contents was immaterial, and as the decision of the Secretary of the Interior denying approval of such selections was based solely upon supposed variance in value of the coal deposits in the selected and surrendered lands, the said decision was unwarranted under the law, and was, therefore, arbitrary and unreasonable.

III.

That the Court erred in failing to find and hold that, as the coal land law, providing for the disposition of coal lands on the public domain, fixes their value for disposing purposes with respect to the distance of the lands from a line of constructed road, and at the rate of \$10.00 and \$20.00 per acre when within or beyond fifteen miles from a constructed road, that even if the presence of coal within the lands selected in exchange under the Act of April 28, 1904, was material in determining their "quality" for the purpose of exchange under that act, said provision of the coal land law fixed their value, and as the value of the selected and surrendered lands was the same when so reckoned under the provisions of the coal land law, the decision of the Secretary denying approval of such selections being based solely upon the supposed variance in value of the coal deposits in the selected and surrendered lands, the said decision was unwarranted under the law, and was, therefore, arbitrary and unreasonable.

IV.

That the Court erred in failing to find and hold that, even if a classification of coal lands, with respect to the coal contents was

authorized under the law, as the uniform administration of the law from the time of its passage until long after the passage of the Act of April 28, 1904, supra, under which exchange was sought, respected value of coal lands for disposing purposes, only as and in accordance with their distance from a line of constructed road, provided for in the coal land law, the Act of April 28, 1904, was passed with a knowledge of this uniform administration of the coal land law, and was intended to and did control in determining value of coal lands surrendered and selected under the Act of April 28, 1904, and as the decision of the Secretary of the Interior denying approval of such selections was based solely upon the supposed variance in value of the coal deposits in the selected and surrendered lands, said decision was unwarranted under the law, and was, therefore, arbitrary and unreasonable.

V.

That the Court erred in failing to find and hold that, even if the classification of the lands with regard to coal contents was permissible with respect to fixing "quality" for the purpose of exchange under the Act of April 28, 1904, as the lands surrendered, as well as those selected in exchange, had been, prior to the selection here in question, classified as of one and the same value, namely, \$20.00 per acre, they were of the same "quality," and as the decision of the Secretary denying approval of such selections was based solely upon the supposed variance in value of the coal deposits in the selected and surrendered lands, said decision was unwarranted under the law, and was, therefore, arbitrary and unreasonable.

VI.

That the Court erred in failing to find and hold that even if the coal contents in the surrendered and selected lands were to be considered when determining their "quality" for the purpose of exchange under the Act of April 28, 1904, as the selection in exchange was made in good faith and upon the basis of the classification existing at the time same was filed; that its validity could not be affected by a subsequent classification of the lands, especially where the lands had been the subject of transfer and sale, and innocent persons had expended large sums in the purchase and exploration of the lands long prior to such reclassification, and as the decision of the Secretary denying approval of such selections was based solely upon the supposed variance in value of the coal deposits in the selected and surrendered lands upon the reclassification long after selection, said decision was unwarranted under the law, and was, therefore, arbitrary and unreasonable.

VII.

That the Court erred in failing to find and hold that, as the Santa Fe Pacific Railroad Company upon an invitation of the Secretary of the Interior had surrendered lands under the Act of April 28,

1904, which have been disposed of by the United States, and could not, therefore, be returned to the company, to refuse to approve a selection made in exchange admittedly of lands subject to exchange under the known condition at the time the selection was filed, merely because of a condition created by the act of the Secretary in a subsequent reclassification of the coal deposits in the lands, was an unwarranted act amounting to practical confiscation of the surrendered property, and was, therefore, unreasonable and arbitrary.

VIII.

That the Court erred in holding in effect that, merely because the Act of April 28, 1904, in providing for exchange "as may be agreed upon with the Secretary of the Interior" vested in that officer the power to pass upon the relative value of the coal deposits in the surrendered and selected lands, and in exercise of his discretion to grant or refuse approval without respect to the known condition of values in the lands at the time of the surrender and the selection of lands in exchange.

IX.

That the Court erred in not finding that the assumed power to accept or reject a selection in exchange under the Act of April 28, 1904, without respect to conditions at date of filing the selection in exchange was an unreasonable construction of that act, and, therefore, in effect the exercise of arbitrary power.

X.

That the Court erred in holding that the Act of April 28, 1904, in providing for exchange "as may be agreed upon with the Secretary of the Interior" gave the Secretary either the power or authority, after agreeing to accept certain base lands from the company, and actually accepting the same, to impose conditions in respect to the selected lands not justified by the Act itself nor made a condition of his acceptance.

XI.

That the Court erred in affirming the decree of the Supreme Court of the District dismissing plaintiff's bill and discharging the rule issued thereon.

XII.

That the Court erred in failing to grant the plaintiff relief as prayed for in his bill filed in this cause, as against the unwarranted and unreasonable act of the defendant in withholding approval of plaintiff's selection made as therein complained of.

ALEX. BRITTON,
F. W. CLEMENTS,
Attorneys for Plaintiff.

June 16, 1920.

[Endorsed:] No. 3341. Santa Fe Pacific R. R. Co., a Corporation, Appellant, vs. John Barton Payne, Secretary of the Interior. On appeal to the Supreme Court of the United States. Assignment of Errors. Court of Appeals, District of Columbia. Filed Jun- 30, 1920. Henry W. Hodges, Clerk.

Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 25, inclusive, constitute a true copy of the transcript of the record and proceedings of said Court of Appeals in the case of Santa Fe Pacific Railroad Co., a Corporation, Appellant, vs. John Barton Payne, Secretary of the Interior, No. 3341, April Term, 1920, as the same remains upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 1st day of July, A. D. 1920.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
*Clerk of the Court of Appeals of
the District of Columbia.*

Endorsed on cover: File No. 27,809. District of Columbia Court of Appeals. Term No. 452. Santa Fe Pacific Railroad Company, appellant, vs. John Barton Payne, Secretary of the Interior. Filed July 15th, 1920. File No. 27,809.

(1896)

NEW YORK
JAN 1 1881

IN THE
Supreme Court
OF THE UNITED STATES

October Term, 1880

No. 110

SANTA FE PACIFIC RAILROAD COMPANY

Plaintiff v. **WILLIAM B. HARRIS**

Defendant

ALEXANDER BRITTON
E. W. CLEMENTE
Attorneys for Plaintiff

IN THE

Supreme Court

OF THE UNITED STATES

OCTOBER TERM, 1921

No. 109

SANTA FE PACIFIC RAILROAD COMPANY

vs.

ALBERT B. FALL, Secretary of the Interior

BRIEF FOR PLAINTIFF IN ERROR

This case is in all important particulars similar to No. 108, bearing the same title. It became necessary to institute these proceedings in order to preserve a *status quo* in the Land Department, and this case is submitted on the brief filed in the preceding case No. 108.

ALEXANDER BRITTON,
F. W. CLEMENTS,
Attorneys for Appellant.